

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

LOI TAN NGUYEN,

Plaintiff,

v.

NMT MEDICAL, INC.

Defendant.

Civil Action No. 04-CV-11781-DPW

**REVISED STATEMENT OF NMT MEDICAL, INC. IN PREPARATION FOR
SCHEDULING CONFERENCE**

Pursuant to the Court's May 27, 2005 request for an updated Rule 16.1 Scheduling Statement, counsel for defendant NMT Medical, Inc. ("NMT") hereby updates the Scheduling Statement previously filed on March 17, 2005. Counsel for NMT certifies that they have attempted to confer with plaintiff Loi Tan Nguyen regarding updating this revised statement but that the parties were unable to reach an agreement regarding the elements of the revised statement.

On May 18, 2005, the parties participated in a mediation before Jonathan Canter, Esq. for approximately five hours, but were unable to successfully resolve this dispute. NMT is still open to alternatives to litigation that will reduce the time and expense of this matter to the benefit of both the parties and this Court.

I. PROPOSED PRETRIAL SCHEDULE

NMT proposes that discovery be conducted along the following schedule:

Deadline

September 2, 2005

Event

Complete automatic discovery consistent with Fed. R. Civ. P. 26(a)(1) and Local Rule 26.2(A).

| | |
|-------------------------------|--|
| September 9, 2005 | File amendments to pleadings (including amendments to add parties), third-party actions, cross-claims and counterclaims. Together with the Complaint and Summons, counsel granted leave to add a party or third party shall serve on such party a copy of this Scheduling Order. |
| January 6, 2006 | Completion of all discovery, other than requests for admissions and expert disclosures, except for such discovery not reasonably anticipated by the parties. |
| January 27, 2006 | Service of requests for admissions. |
| February 15, 2006 | Service of all responses to requests for admissions; Service of all expert disclosures, if any, pursuant to Fed. R. Civ. P. 26(a)(2). |
| March 2, 2006 | Service of any responses and objections to expert disclosures pursuant to Fed. R. Civ. P. 26(a)(2). |
| March 30, 2006 | File any dispositive motions under Fed. R. Civ. P. 56, with all supporting documents. |
| April 20, 2006 | File any oppositions to dispositive motions under Fed. R. Civ. P. 56, with supporting documents. |
| May 8, 2006 | File all replies to oppositions to dispositive motions under Fed. R. Civ. P. 56, with supporting documents. |
| To be determined by the Court | A pretrial conference, if necessary following decision on dispositive motions, with all dates following such pretrial conference, including expert disclosure and discovery, to be scheduled at the Court's discretion. |

B. Position on Phased Discovery. NMT does not believe it is necessary for discovery to proceed in phases.

C. Motion Schedule. NMT proposes that any dispositive motions under Fed. R. Civ. P. 56, together with all supporting documents shall be served no later than March 30, 2006. All oppositions with supporting documents shall be served no later than April 20, 2006. All replies to oppositions with supporting documents shall be served no later than May 8, 2006.

III. TRIAL BY MAGISTRATE JUDGE

NMT does not consent to referral of this matter for trial by a magistrate judge.

IV. ALTERNATIVE DISPUTE RESOLUTION

The parties have conferred to consider the resolution of the litigation through the use of alternative dispute resolution programs, such as mediation, arbitration and the alternative dispute resolution programs outlined in Local Rule 16.4. The parties attended mediation before Jonathan Canter, Esq. on May 18, 2005, which was unsuccessful. NMT continues to be amenable to resolving the dispute through the use of an alternative dispute resolution program, provided that such program is administered by the Court.

V. CERTIFICATIONS UNDER LOCAL RULE 16.1(D)(3)

NMT's certification required by Local Rule 16.1(D)(3) was submitted on March 17, 2005.

Respectfully submitted,

NMT Medical, Inc.

By its attorneys,

/s/ Julie Murphy Clinton
Jessica A. Foster (BBO# 636841)
Julie Murphy Clinton (BBO# 655230)
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Dated: June 9, 2005

CERTIFICATE OF SERVICE

I, Julie Murphy Clinton, hereby certify that on June 9, 2005, I caused a copy of the foregoing document to be served, by first class mail, upon plaintiff Loi Tan Nguyen.

/s/ Julie Murphy Clinton